

EXHIBIT

#19

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

In re BAYONNE MEDICAL CENTER, :

Debtor, :

BAYONNE MEDICAL CENTER, :

Debtor and :

Debtor-in-Possesssion; and :

ALLEN D. WILEN, in his :

capacity as Liquidating :

Trustee and Estate :

Representative for the Estate :

of Debtor, Bayonne Medical :

Center, :

DEPOSITION OF:

CAROLINE EVANS

VOLUME I

(Pages 1-229)

Plaintiff, :

-vs- :

BAYONNE/OMNI DEVELOPMENT, :

L.L.C., a New Jersey limited :

liability company; et al., :

Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of CONNELL FOLEY, L.L.P., 85
Livingston Avenue, Roseland, New Jersey, on
THURSDAY, MAY 6, 2010, commencing at 10:09 a.m.,
pursuant to Notice.

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www.depolinklegal.com

1 payment schedule would be?

2 A. I don't remember that.

3 Q. What happened next, then, in your
4 pursuit of a pledge from Avery after that? I assume
5 you told us everything you remember about that
6 meeting?

7 A. I do.

8 Q. What happened next in your pursuit of
9 a pledge?

10 A. I'm not exactly sure when I got the
11 pledge form, but when I got it, I gave it to Marvin.

12 Q. By the "pledge form," what do you
13 mean?

14 A. There was a form, a document that the
15 foundation had that everybody who made a pledge
16 would sign. Actually, I got that from Marvin, I got
17 the form from Marvin, not from Vinny.

18 Q. And you got that form from Marvin
19 after this first meeting that you had with Avery
20 discussing the pledge?

21 A. Actually, when they came to me to ask
22 me to ask him for the pledge they gave me the pledge
23 form.

24 Q. At the time of the first conversation
25 with Avery, did you discuss whether the pledge would

1 be binding or not?

2 MR. FALANGA: Object to the form.

3 A. I don't remember the answer to that.

4 But I know there were subsequent conversations that
5 related to that subject.

6 Q. And in the subsequent conversations,
7 did you tell Avery that the pledge would not be
8 binding?

9 MR. FALANGA: Object to the form.

10 Q. You can answer the question.

11 A. I did.

12 Q. On more than one occasion?

13 A. Yes.

14 Q. So now you have the pledge form from
15 Marvin, and what did you do with it?

16 A. I think I gave it to Avery to sign.

17 Q. Were you with him when it was signed?

18 A. I don't think so.

19 Q. Did you fill it out?

20 A. You didn't have to, it was already,
21 like, completed.

22 Q. Who had completed it?

23 A. I can't assume it was Marvin, but I
24 got the form from Marvin.

25 Q. Do you know where Marvin got the

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1 pledge would not be binding?

2 MR. FALANGA: Object to the form.

3 A. It was part of the conversation. You
4 were supposed to say it to them if they broached the
5 subject. It was like, What if my company goes down?
6 Are you going to come after me for this or am I
7 going to be liable for this? Are you going to make
8 me pay this anyway? And then you had to kind of go
9 through the conversation about how a charitable
10 pledge is not binding.

11 Q. That's the spiel you went through
12 with Avery?

13 A. It was the spiel I went through
14 everybody who I asked for money if they asked me.

15 Q. I asked you earlier whether others,
16 so as you know, at BMC knew that you were making
17 that spiel to Avery?

18 A. Absolutely.

19 MR. FALANGA: Object to the form.

20 Q. And who were the others, so far as
21 you know, who were aware of the fact that you were
22 making that pitch to Avery?

23 MR. FALANGA: Objection to form.

24 MR. SAMSON: To the extent she knows,
25 obviously.

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21 you know, who were aware of the fact that you were
22 making that pitch to Avery?

23 MR. FALANGA: Objection to form.

24 MR. SAMSON: To the extent she knows,
25 obviously.

1 MR. GRUEN: Of course.

2 A. I can only tell you the people I'm
3 sure knew. Marvin knew, Heather knew that we would
4 say "nonbinding," or we would say, "We're not going
5 to go after you for this," or, "We're not going to
6 hold you liable for this." Because those three
7 people were at fundraising lunches where I was doing
8 the spiel, so they heard me. Rob knew that --

9 Q. Rob Evans?

10 A. Rob Evans, yes, that I was saying
11 that to everybody that I asked for money. Because I
12 told him you're going to frighten people.

13 Q. Any others that you know of who were
14 aware of that?

15 A. Who were doing it?

16 Q. No, who were aware that that was part
17 of your pitch to Avery?

18 A. Who were aware that it was
19 specifically part of my pitch to Avery?

20 Q. Yes.

21 A. No, I can't say that.

22 Q. Who were the others, I interrupted
23 you, who were making similar pitches to other
24 prospective pledgors?

25 A. Stephanie, Heather, Marvin, John

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11 that to everybody that I asked for money. Because I
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13 Q. Any others that you know of who were
14 aware of that?

15 A. Who were doing it?

16 Q. No, who were aware that that was part
17 of your pitch to Avery?

18 A. Who were aware that it was
19 specifically part of my pitch to Avery?

20 Q. Yes.

21 A. No, I can't say that.

22 Q. Who were the others, I interrupted
23 you, who were making similar pitches to other
24 prospective pledgors?

25 A. Stephanie, Heather, Marvin, John

1 Hausmann, me, Vinny Lombardo, it was the enterprise.
2 It was not my particular spiel, if you will. Sorry
3 about the whole "spiel" thing.

4 Q. At some point in time did Avery ask
5 for written confirmation --

6 A. Yes.

7 Q. -- that the pledge would not be
8 binding?

9 A. Yes, he did.

10 Q. And what was your response to him
11 when he made that request?

12 A. I said I would have to talk, I knew I
13 would have to talk to somebody. And so I did, I
14 talked to Marvin and I talked to Rob. I said,
15 "Avery wants something that says that you're not
16 going to go after him, that you're not going to make
17 him liable, like a comfort letter."

18 Q. And what, if anything, did Rob or
19 Marvin say?

20 A. I think Rob said "Okay."

21 Q. Do you know whether similar comfort
22 letters were given or had been given in the past to
23 pledgors or prospective pledgors?

24 A. When they were asked for.

25 Q. You say when they asked for them?

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1 physical document.

2 Q. By "this physical document," you mean
3 what?

4 A. I mean with an "X" on it.

5 Q. After you and Avery parted company
6 the day that you presented him with the pledge form
7 dated October 14, '05 that we looked at a moment
8 ago, what happened next in connection with your
9 pursuit of the pledge?

10 A. You know what? I don't exactly
11 remember what happened, but I do remember that there
12 was some discrepancy with the form, with the
13 signature on the form, or the form itself. I
14 actually don't exactly remember.

15 Q. I'm sorry, go ahead.

16 A. But what happened is he had to sign
17 another form.

18 Q. And what was the discrepancy that
19 meant that he had to sign a different form?

20 A. Heather told me the name on the form
21 was wrong.

22 Q. So there was something wrong with the
23 name Bayonne Healthcare Development, L.L.C.?

24 A. Uh-huh.

25 Q. What, if anything, if you remember,

1 did she tell you was wrong with the name?

2 A. It had to be his company, or
3 something like that.

4 Q. Did she tell you how she learned that
5 the name was wrong?

6 A. She told me that it was given back to
7 her doing the audit review, or something like that.
8 Before an auditor comes in, you review all the
9 documents you're going to present. I guess maybe
10 that's when. I'm not really quite sure.

11 Q. Let's back up a couple of spaces.

12 A. Okay.

13 Q. Did there come a time when you saw
14 the signed version of the October 14th pledge?
15 Because I think you told us that you don't recall
16 that Avery signed it in your presence.

17 A. Right.

18 Q. So did there come a time that you saw
19 that document, the October 14th pledge by Bayonne
20 Healthcare Development, L.L.C. signed?

21 A. I remember specifically Marv Apsel
22 being in the hallway of the Bayonne Medical Center
23 with that document in his hand, and Rob was in the
24 hallway, Marv was in the hallway, I don't remember
25 who else, but I think Vinny was there, and they were

1 saying that Avery -- that they've got a \$5,000,000
2 pledge today, and this was the document that he had
3 in his hand (indicating).

4 Q. The one that we looked at earlier?

5 A. Yes.

6 Q. And then sometime after that, is that
7 right, you learned from Heather that there was
8 something wrong with the name?

9 MR. FALANGA: Object to the form.

10 A. Right.

11 Q. Did she tell you what was wrong with
12 the name?

13 A. It wasn't his company, or something
14 like that.

15 Q. Okay. So then --

16 A. She said I had to go get him to sign
17 a new one.

18 Q. I was going to say, what, if
19 anything, did you do based upon that. And she told
20 you that you had to get him to sign another one.
21 Did she tell you what the name of the company should
22 be on the next one?

23 A. It had to say Omni, that was his
24 company.

25 Q. Did she say anything else?

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2 It was not my particular spiel, if you will. Sorry
3 about the whole "spiel" thing.

4 Q. At some point in time did Avery ask
5 for written confirmation --

6 A. Yes.

7 Q. -- that the pledge would not be
8 binding?

9 A. Yes, he did.

10 Q. And what was your response to him
11 when he made that request?

12 A. I said I would have to talk, I knew I
13 would have to talk to somebody. And so I did, I
14 talked to Marvin and I talked to Rob. I said,
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17 him liable, like a comfort letter."

18 Q. And what, if anything, did Rob or
19 Marvin say?

20 A. I think Rob said "Okay."

21 Q. Do you know whether similar comfort
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23 pledgors or prospective pledgors?

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22 letters were given or had been given in the past to
23 pledgors or prospective pledgors?

24 A. When they were asked for.

25 Q. You say when they asked for them?

1 A. Sure, if they asked for it.

2 Q. Was there like a form of comfort
3 letter that you had on file?

4 A. No, there was no form. I would say
5 no.

6 Q. Who drafted the comfort letter in
7 this case, do you know?

8 A. I don't know the answer to that.

9 Q. Was counsel involved, do you know?

10 A. I do not know the answer to that.

11 Q. I think we're actually going to go to
12 the next volume in my remaining three minutes.
13 We're going to the second volume, Number 21,
14 formerly marked as D-19.

15 A. Okay.

16 Q. Is this the comfort letter that
17 you're referring to?

18 A. Yes.

19 MR. FALANGA: Object to the form.

20 Q. And that was signed by Robert Evans?

21 A. Yes.

22 Q. And was this presented to Omni Asset
23 Management?

24 A. Yes, it was given to Avery.

25 Q. By whom?

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1 A. It might have been me, but I'm not
2 sure. I don't know if we mailed it or if I gave it
3 to him.

4 Q. Did you have any discussion with him
5 about it when you gave it to him, whether it was
6 face to face or over the phone?

7 A. He asked for it, so I provided it.

8 Q. Do you remember any further
9 discussion about it?

10 A. I don't remember any further
11 discussion about it. Anything specific as to Here's
12 your letter, I mean, I don't know.

13 Q. I asked you earlier if others knew
14 that you were making the spiel or the pitch to
15 Avery. Were others at BMC aware of the fact that
16 this letter was given to Avery?

17 A. Yes.

18 Q. Can you tell me who?

19 A. I'm sure Marvin knew.

20 Q. How do you know?

21 A. Because I had a conversation with him
22 about it. He was there when I said that this guy is
23 going to pledge all this the money, he's nervous.
24 What if he had a reversal of fortune, is basically
25 what he's saying, what happens? Marvin goes, "I

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1 stuff." Do you recall what that was referring to?

2 A. I don't.

3 Q. Do you remember having a conversation
4 with Mr. Eisenreich about rehabilitation --

5 A. I don't remember.

6 Q. -- services?

7 A. I don't, actually.

8 Q. Now, you referenced or you referred
9 to a letter as a "comfort letter" earlier in your
10 testimony. Can you just describe for me generally
11 what you meant by "comfort letter"?

12 A. I don't know, actually. It was just
13 a phrase that was given to it at the time. A letter
14 saying we won't go after you for the pledge amount,
15 was the gist of it. I don't think I coined it, I
16 think that's what it was called.

17 Q. Do you recall who gave you that term?

18 A. I don't.

19 Q. You had testified earlier that Avery
20 was looking for a "comfort letter" in connection
21 with the pledge. Is that your understanding?

22 A. Uh-huh.

23 Q. Did you have any responsibility for
24 preparing the comfort letter?

25 A. I did not.